

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

Case No.: 1H 2011 365

KELLY RAMOS BAILEY
8506 E. Woodcove Drive, #142
Anaheim Hills, CA 92808

EFFECTIVE DATE OF DECISION AND ORDER

Having met all licensure requirements, the attached Decision and Order adopted by the Respiratory Care Board of California, Department of Consumer Affairs, on April 5, 2012 shall become effective on April 10, 2012.

Original signed by: _____

MURRAY L. OLSON, RCP, RRT-NPS, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. 1H-2011-365

13 **KELLY RAMOS BAILEY**
14 **8506 E. Woodcove Drive, #142**
Anaheim Hills, Ca 92808

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory Care
21 Board of California. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Samuel K.
23 Hammond, Deputy Attorney General.

24 2. Kelly Ramos Bailey (Respondent) is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about May 26, 2011, Respondent filed an application dated May 19, 2011, with
27 the Respiratory Care Board to obtain Respiratory Care Practitioner's License.

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1 **JURISDICTION**

2 4. On or about October 19, 2011, Statement of Issues No. 1H-2011-365 was filed before
3 the Respiratory Care Board (Board), Department of Consumer Affairs, and is currently pending
4 against Respondent. The true and correct copy of the Statement of Issues and all other statutorily
5 required documents were properly served on Respondent on October 19, 2011. A true and correct
6 copy of Statement of Issues No. 1H-2011-365 is attached as Exhibit A and incorporated herein by
7 reference.

8 **ADVISEMENT AND WAIVERS**

9 5. Respondent has carefully read, and understands the charges and allegations in
10 Statement of Issues No. 1H-2011-365. Respondent has also carefully read, and understands the
11 effects of this Stipulated Settlement and Disciplinary Order.

12 6. Respondent is fully aware of his legal rights in this matter, including the right to a
13 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
14 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
15 the right to present evidence and to testify on his own behalf; the right to the issuance of
16 subpoenas to compel the attendance of witnesses and the production of documents; the right to
17 reconsideration and court review of an adverse decision; and all other rights accorded by the
18 California Administrative Procedure Act and other applicable laws.

19 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
20 every right set forth above.

21 **CULPABILITY**

22 8. Respondent admits the complete truth of each and every charge and allegation in
23 Statement of Issues No. 1H-2011-365.

24 9. Respondent agrees that his application for a Respiratory Care Practitioner License is
25 subject to denial and he agrees to be bound by the Board's probationary terms as set forth in the
26 Disciplinary Order below.

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1 CONTINGENCY

2 10. This stipulation shall be subject to approval by the Respiratory Care Board.
3 Respondent understands and agrees that counsel for Complainant and the staff of the Respiratory
4 Care Board of California may communicate directly with the Board regarding this stipulation and
5 settlement, without notice to or participation by Respondent. By signing the stipulation,
6 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
7 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
8 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
9 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
10 the parties, and the Board shall not be disqualified from further action by having considered this
11 matter.

12 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
13 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
14 effect as the originals.

15 12. In consideration of the foregoing admissions and stipulations, the parties agree that
16 the Board may, without further notice or formal proceeding, issue and enter the following
17 Disciplinary Order:

18 DISCIPLINARY ORDER

19 **IT IS HEREBY ORDERED** that Respondent Kelly Ramos Bailey be issued a conditional
20 license to practice respiratory care, which shall be on probation to the Board for a period of five
21 (5) years on the following terms and conditions:

22 1. **WORK SCHEDULES** Respondent shall be required to submit to the probation
23 monitor work schedules on a weekly/monthly basis for the length of probation for each and every
24 place of employment. Respondent shall ensure the Board has a copy of her/his current work
25 schedule at all times for each place of employment.

26 2. **BIOLOGICAL FLUID TESTING** Respondent, at her expense, shall participate in
27 random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva),
28 breathalyzer, hair follicle testing, and/or any drug screening program approved by the Board.

1 Respondent shall be required to make daily contact, to determine if she is required to
2 submit a specimen for testing, each day, including weekends, holidays, and vacations in or
3 outside of California, at a lab approved by the Board. Board representatives may also appear
4 unannounced, at any time to collect a specimen. All collections will be observed.

5 At all times, Respondent shall fully cooperate with the Board or any of its representatives,
6 and shall, when directed, appear for testing as requested and submit to such tests and samples for
7 the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All
8 alternative testing sites, due to vacation or travel outside of California must be approved by the
9 Board, 30 days prior to the vacation or travel.

10 If Respondent is unable to provide a specimen in a reasonable amount of time from the
11 request, while at the work site, Respondent understands that any Board representative may
12 request from the supervisor, manager or director on duty to observe Respondent in a manner that
13 does not interrupt or jeopardize patient care in any manner until such time Respondent provides a
14 specimen acceptable to the Board.

15 If Respondent tests positive for a banned substance (including testing positive for ETG),
16 the Board will contact the Respondent and his employers, human resources personnel, directors,
17 managers, supervisors, and/or contractors and notify them of the positive test, including the
18 substance(s) and levels detected. Thereafter, the Board may contact the specimen collector,
19 laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to
20 determine whether the positive test is evidence of prohibited use. If the Board determines the
21 positive test is not evidence of prohibited use, the Board shall inform the Respondent and others
22 previously contacted, that the positive test was not a violation of his probationary order.

23 3. **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** For
24 purposes of these terms and conditions, a banned substance includes alcohol, marijuana,
25 controlled substances and any and all other mood altering drugs and substances. Respondent shall
26 completely abstain from the possession or use of all banned substances and their associated
27 paraphernalia. Respondent may take other medication when lawfully prescribed by a licensed

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1 practitioner as part of a documented medical treatment. Respondent shall provide the Board a
2 copy of a prescription within five days of the date the prescription was filled.

3 Respondent shall execute a release authorizing the release of pharmacy and prescribing
4 records as well as physical and mental health medical records. Respondent shall also provide
5 information of treating physicians, counselors or any other treating professional as requested by
6 the Board.

7 Respondent shall ensure that he is not in the presence of or in the same physical location as
8 individuals who are using illegal substances, even if Respondent is not personally ingesting the
9 drug(s). Respondent shall also ensure he is not ingesting or using any product that contains trace
10 amounts of alcohol or any other banned substances (including but not limited to: cold/flu
11 medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products,
12 perfumes, poppy seeds, dessert or any foods).

13 Any positive result that registers over the established laboratory cutoff level for a banned
14 substance, shall be reported to each of Respondent's employers.

15 4. **OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local.
16 The Respondent shall also obey all regulations governing the practice of respiratory care in
17 California.

18 Respondent shall notify the Board in writing within three days of any incident resulting in
19 his arrest, or charges filed against, or a citation issued against, Respondent.

20 5. **RESTRICTION OF PRACTICE** Respondent may not be employed or function as
21 a member of respiratory care management or supervisory staff during the entire length of
22 probation. This includes lead functions. Respondent is prohibited from working as part of a
23 transport team. Respondent is also prohibited from providing instruction or supervision to
24 respiratory care students or applicants whether in a clinical or classroom setting.

25 6. **QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance
26 under penalty of perjury, on forms to be provided, to the probation monitor assigned by the
27 Board. Omission or falsification in any manner of any information on these reports shall

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1 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
2 to revoke probation against Respondent's respiratory care practitioner license.

3 Quarterly report forms will be provided by the Board. Respondent is responsible for
4 contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year
5 of probation and the entire length of probation as follows:

6 For the period covering January 1st through March 31st, reports are to be completed and
7 submitted between April 1st and April 7th.

8 For the period covering April 1st through June 30th, reports are to be completed and
9 submitted between July 1st and July 7th.

10 For the period covering July 1st through September 30th, reports are to be completed and
11 submitted between October 1st and October 7th.

12 For the period covering October 1st through December 31st, reports are to be completed
13 and submitted between January 1st and January 7th.

14 7. **PROBATION MONITORING PROGRAM** Respondent shall comply with
15 requirements of the Board appointed probation monitoring program, and shall, upon reasonable
16 request, report to or appear to a local venue as directed.

17 Respondent shall claim all certified mail issued by the Board, respond to all notices of
18 reasonable requests timely, appear as requested by the Board, and submit Annual Reports,
19 Identification Update reports or other reports similar in nature, as requested and directed by the
20 Board or its representative.

21 Respondent shall provide to the Board the names, physical work addresses, work mailing
22 addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel,
23 directors, managers, supervisors, and contractors, and any person providing direct supervision,
24 and shall give specific, written consent that the Respondent authorizes the Board and its
25 representatives and the employers, human resources personnel, directors, managers, supervisors,
26 and contractors, and any person providing direct supervision, to communicate regarding the
27 Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited
28 to, any violation or potential violation of any probationary term and condition.

1 Respondent is encouraged to contact the Board's Probation Program at any time he has a
2 question or concern regarding his terms and conditions of probation.

3 8. **PROBATION MONITORING COSTS** All costs incurred for probation
4 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be
5 adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and
6 conditions may also cause this amount to be increased. Probation monitoring costs will not be
7 tolled.

8 All payments for costs are to be sent directly to the Respiratory Care Board and must be
9 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs
10 incurred.)

11 If Respondent is unable to submit costs for any month, he shall be required, instead to
12 submit an explanation of why he/she is unable to submit the costs, and the date(s) he will be able
13 to submit the costs including payment amount(s). Supporting documentation and evidence of why
14 the Respondent is unable to make such payment(s) must accompany this submission.

15 Respondent understands that failure to submit costs timely is a violation of probation and
16 submission of evidence demonstrating financial hardship does not preclude the Board from
17 pursuing further disciplinary action. However, Respondent understands that by providing
18 evidence and supporting documentation of financial hardship it may delay further disciplinary
19 action.

20 In addition to any other disciplinary action taken by the Board, an unrestricted license will
21 not be issued at the end of the probationary period and the respiratory care practitioner license
22 will not be renewed, until such time all probation monitoring costs have been paid.

23 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
24 responsibility to reimburse the Board for costs incurred.

25 9. **EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of
26 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of her probation period.

27 Respondent may substitute successful completion of a minimum of thirty (30) additional
28 continuing education hours, beyond that which is required for license renewal, for each 8 months

1 of employment required. Respondent shall submit proof to the Board of successful completion of
2 all continuing education requirements. Respondent is responsible for paying all costs associated
3 with fulfilling this term and condition of probation.

4 10. **NOTICE TO EMPLOYER** Respondent shall be required to inform all current and
5 subsequent employers, directors, managers, supervisors, and contractors during the probation
6 period, of the discipline imposed by this decision by providing his current and subsequent human
7 resources personnel, directors, managers, supervisors, and contractors with a complete copy of
8 the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the
9 beginning of or returning to employment or within 3 days from each change in a supervisor or
10 director.

11 If Respondent is employed by or through a registry, Respondent shall also make each
12 hospital or establishment to which he is sent aware of the discipline imposed by this decision by
13 providing his human resources personnel, manager, and supervisor for each shift, at each hospital
14 or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in
15 this matter prior to the beginning of employment. This must be done each time there is a change
16 in supervisors or administrators.

17 The employer will then inform the Board, in writing, that he/she is aware of the discipline,
18 on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to
19 obtain additional forms if needed. All reports completed by the employer must be submitted from
20 the employer directly to the Board.

21 In addition, any employer, director, manager, supervisor or contractor, shall report to the
22 Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of
23 alcohol or any substance or has had any occurrence of substance abuse.

24 11. **SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of
25 Performance are due for each year of probation and the entire length of probation from each
26 employer, as follows:

27 For the period covering January 1st through March 31st, reports are to be completed and
28 submitted between April 1st and April 7th.

1 For the period covering April 1st through June 30th, reports are to be completed and
2 submitted between July 1st and July 7th.

3 For the period covering July 1st through September 30th, reports are to be completed and
4 submitted between October 1st and October 7th.

5 For the period covering October 1st through December 31st, reports are to be completed
6 and submitted between January 1st and January 7th.

7 Respondent is ultimately responsible for ensuring her employer(s) submits complete and
8 timely reports.

9 12. **CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the
10 Board, and appointed probation monitor, in writing, of any and all changes of employment,
11 location, and address within 3 days of such change. This includes but is not limited to applying
12 for employment, termination or resignation from employment, change in employment status,
13 change in supervisors, administrators or directors.

14 Respondent shall also notify his probation monitor AND the Board IN WRITING of any
15 changes of residence or mailing address within 3 days. P.O. Boxes are accepted for mailing
16 purposes, however the Respondent must also provide his physical residence address as well.

17 13. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the
18 costs of the investigation and prosecution of this case. That sum shall be \$1,500.00 and shall be
19 paid in full directly to the Board, in equal quarterly payments, within 12 months from the
20 effective date of this decision. Cost recovery will not be tolled.

21 If Respondent is unable to submit costs timely, he shall be required, instead to submit an
22 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will
23 be able to submit the costs including payment amount(s). Supporting documentation and evidence
24 of why the Respondent is unable to make such payment(s) must accompany this submission.

25 Respondent understands that failure to submit costs timely is a violation of probation and
26 submission of evidence demonstrating financial hardship does not preclude the Board from
27 pursuing further disciplinary action. However, Respondent understands that by providing

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1 evidence and supporting documentation of financial hardship may delay further disciplinary
2 action.

3 Consideration to financial hardship will not be given should Respondent violate this term
4 and condition, unless an unexpected AND unavoidable hardship is established from the date of
5 this order to the date payment(s) is due.

6 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
7 responsibility to reimburse the Board for these costs.

8 14. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE** Periods of
9 residency or practice outside California, whether the periods of residency or practice are
10 temporary or permanent, will toll the probation period but will not toll the obey all laws, quarterly
11 reports, probation monitoring program, probation monitoring costs, or cost recovery
12 requirements. Travel out of California for more than 30 days must be reported to the Board in
13 writing prior to departure. Respondent shall notify the Board, in writing, within 3 days, upon his
14 return to California and prior to the commencement of any employment where representation as a
15 respiratory care practitioner is/was provided.

16 Respondent's license shall automatically be cancelled if respondent's cumulative period
17 tolling is greater than five years. However, the cancellation of the license does not relieve the
18 respondent from outstanding cost recovery or probation monitoring costs.

19 15. **VALID LICENSE STATUS** Respondent shall maintain a current, active and valid
20 license for the length of the probation period. Failure to pay all fees and meet CE requirements
21 prior to his license expiration date shall constitute a violation of probation.

22 16. **VIOLATION OF PROBATION** If Respondent violates any term of the probation
23 in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may
24 revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke
25 probation is filed against Respondent during probation, the Board shall have continuing
26 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
27 modification of penalty shall be considered while there is an accusation or petition to revoke
28 probation or other penalty pending against Respondent.

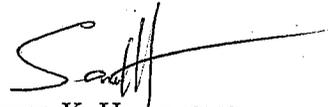
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

Dated: 1/31, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General



SAMUEL K. HAMMOND
Deputy Attorney General
Attorneys for Complainant

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